

Proposals For Specific Crimes Subcommittee

1. Adding a Robbery 3rd to Code which would cover shoplifting and simple assault, and would need to decide if felony or something less such as serious misdemeanor.
2. Elimination of mandatory minimums.
3. Elimination of enhanced penalties for assaults dependent on the status of the victim (peace officer, parole board member, social worker, etc.).
4. Persons shouldn't have the ability to file a charge and be witness.
5. Eliminate suspension of driver's license for all crimes not involving driving.
6. Change various crimes to scheduled violations: all DNR offense, local/county ordinances, prostitution, pimping, and pandering not involving a minor, the rest of Iowa Code chapter [725](#) except Iowa Code section [725.17](#) and [725.18](#).
7. Change Iowa Code section [321J.13](#) to allow arguments concerning unconstitutional stops at administrative hearings. Amend Iowa Code section [321J.13](#)(6) to add subsection (b)(3) "the charge of operating while intoxicated was dismissed"; and (b)(4) "the jury or court returned a verdict of not guilty."
8. Amend Iowa Code section [908.11](#) to allow trial courts the option of extending the length a defendant's probation when a violation of probation has been established. A ruling by the Iowa Court of Appeals in *State v. Hemphill*, May 29, 2009, states that a trial court cannot extend the defendant's probation under these circumstances.
9. Eliminate Iowa Code section [232.2](#)(58)(1) and all related sections and subsections that allow for waiving a juvenile to adult court.
10. Eliminate unconstitutional crimes such as flag desecration, partial-birth abortion, and search incident to citation.
11. Expand definitions section within Iowa Code section [719.7](#) to include any substance so that it is clear that prescription drugs are to be considered "contraband."
12. Eliminate or reduce charges in connection with Iowa Code section [706A.2](#)(4), which allows a person to be charged with a Class B felony in addition to underlying charges for crimes committed for financial gain (robbery, burglary, etc.). Current law does not require a conviction on the underlying charges and only legal distinction is that the crimes are committed on an ongoing basis for financial gain.
13. Rename Iowa Code section [709.8](#) (Lascivious Act with a Child) and/or Iowa Code section [709.14](#) (Lascivious Conduct with a Minor) to make it easier for the general public to distinguish the two offenses.
14. Amend Iowa Code section [704.1](#) (Reasonable Force) to remove the requirement that a victim must make a reasonable and legally-defensible decision whether to retreat from attacker or defend themselves, based on a subjective perception of

whether such retreat “entails a risk to life or safety, or the life or safety of a third party...”

15. Reword or amend Iowa Code section [708.6](#) (Intimidation with a Dangerous Weapon) to clarify the difference between what constitutes a C Felony and a D Felony.
16. Clarify Iowa Code section [715A.8](#)(2) (Identity Theft) to state whether the “property, services, or other benefit” must actually have cash value, as might be suggested in Iowa Code section [715A.8](#)(3).
17. Change the classification of escape to always be a D Felony when inmate escapes from either a DOC institution or CBC residential facility. Under Iowa Code section [719.4](#), escape is to be the same class of offense as the person’s original offense.
18. Limit OWI’s to driving on highways, or change definition of operate to only vehicles that are in motion and running. No more convictions for sleeping in car in parking lot.
 - Provide a corresponding amendment to Iowa Code section [321J.2](#) to prohibit being in physical control of a motor vehicle that is not on a highway or in motion but has its motor running while under the influence of alcohol, having an alcohol concentration in excess of .08 or while under the influence of drugs.
 - No license suspension for physical control violation.
 - Punished as a Simple Misdemeanor.
19. Amend Iowa Code chapter [321J](#) to specifically state somewhere that “Any amount” as used in Iowa Code section [321J.2](#)(3) means:

Substance	Minimum Level (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2000
Phencyclidine	25
Amphetamines	1000

- See Iowa Code section [321J.2](#)(8)(c) and Iowa Administrative Code section 661-157.7(321J).
 - In response to Iowa Supreme Court’s ruling in *State v. Comried*
20. Amend Iowa Code section [804.20](#) to provide: “If a call is made, it shall be made in the presence of the person having custody of the one arrested or restrained, *however, the contents of all calls, consultations, or conversations between the arrested person and attorney and/or family member shall be deemed confidential*

and shall not be re-disclosed or in any manner used against the arrested person in a criminal prosecution, civil action, or license suspension proceeding arising out of the facts and circumstances giving rise to the arrest.”

21. Provide for delivery and storage of substance abuse evaluation reports and other confidential medical records via a secure and encrypted server as is done with the Department of Transportation.
22. Amend Iowa Code section [321J.11](#) second paragraph to provide: “Law enforcement shall make reasonable efforts to facilitate an arrested individual’s request to obtain an independent chemical test and shall transport the individual to the nearest available medical facility without unnecessary delay for purposes of obtaining an independent chemical test in the event that the arrested person is not released pursuant to a citation.”
23. Amend OWI temporary restricted license eligibility.
 - Remove temporary restricted license ineligibility for all first offense OWI’s regardless of test failure or refusal so long as an ignition interlock device is installed so long as no accident resulting in personal injury to someone other than the defendant has occurred.
 - Permit temporary restricted licenses for Second Offenses if ignition interlock device is installed and 30 days have passed for test “failure” and 90 days for “test refusal” and no accident resulting in personal injury to someone other than the defendant.
24. Amend Iowa Code section [321J.20](#)(1)(b) and [321J.4](#)(9) to provide for temporary restricted license regardless of whether entered a plea of guilty to the charge of Operating While Intoxicated.
25. Provide for mandatory video and audio recording of all implied consent proceedings, Iowa Code section [804.20](#) advisories and evidential breath testing upon arrival at the place of detention.
26. Replace “reasonable grounds” with “probable cause” throughout Iowa Code chapter [321J](#).
27. Provide that a pre-trial detainee may not be transported and housed outside of the county where charges have been filed without his/her written consent.
28. Expand the scope of the administrative hearing pursuant to Iowa Code section [321J.13](#) to also specifically authorize the agency to consider:
 - a. Whether the individual was properly advised pursuant to Iowa Code section [321J.8](#).
 - b. Whether Iowa Code section [804.20](#) was violated.
 - c. Whether there was a violation of Iowa Code section [321J.11](#).
29. Codify “methods” for chemical testing
 - a. Require two separate breath tests – See National Safety Council recommendations.

- b. If urine is used – require void of bladder prior to collection.
 - c. Specify if Methods are not followed, test results may not be used against individual in criminal prosecution, civil action, or suspension of driving privilege proceedings.
- 30. Permit the expungement of all simple misdemeanor offenses after 2 years if the individual has not been convicted of a criminal offense.
- 31. Require audio and video recordings of all police questioning of suspects or “persons of interest” in Felony investigations.
- 32. Codify necessity defense.

“When a defendant is faced with an emergency situation where the threatened harm is immediate and the threatened disaster imminent, the affirmative defense of necessity permits him to choose the lesser of two evils and avoid the greater harm by bringing about the lesser harm. When an individual acts under necessity, choosing the lesser of the two evils, he commits no crime so long as he is without reasonable options by which he might avoid both evils and is not personally at fault for creating the situation creating the necessity to make a selection.

In the above determination, you may consider:

 - 1. the harm avoided;
 - 2. the harm done;
 - 3. the defendant’s intention to avoid the greater harm;
 - 4. the relative value of the harm avoided and the harm done; and
 - 5. optional courses of action and the imminence of disaster.
 - *State v. Walton*, 311 N.W.2d 113 (Iowa 1981)
- 33. Amend Iowa Code section [704.10](#) (compulsion defense) to allow the defense in instances where the individual injured or killed is the one compelling the illegal act.

“No act, other than an act by which one intentionally or recklessly causes physical injury to another *other than the compeller*, is a public offense if the person so acting is compelled to do so by another's threat or menace of serious injury, provided that the person reasonably believes that such injury is imminent and can be averted only by the person doing such act.”

For an example refer to the case of *State v. William Pinegar*
- 34. Eliminate the classification of aggravated misdemeanors by reclassifying nonviolent aggravated misdemeanors as serious misdemeanors, and reclassifying aggravated misdemeanors that do have a violent component as Class D Felonies.